HAT v PAT

HIGH COURT (KUALA LUMPUR) — DIVORCE PETITION NO WA-33–614–12 OF 2023
EVROL MARIETTE PETERS J
25 OCTOBER 2024

Family Law — Divorce — Petition — Whether Malaysian High Court order allowing petitioner to serve divorce petition on wife residing in Singapore via substituted service did not offend Singapore law — Whether modes of substituted service employed were available under Singapore law — Whether Malaysia, rather than Singapore, was the more appropriate forum to hear the divorce proceedings between the parties

The petitioner-husband ('PH') and respondent-wife ('RW'), both Malaysian citizens, married in Miri, Sarawak, before they moved to Australia where their three children were born. The family later relocated to Singapore, but three years after that move, PH returned to Malaysia to manage his businesses whilst his wife and children remained in Singapore. 15 years later, RW filed for divorce from PH in Singapore. PH responded by filing for divorce from RW in Kuala Lumpur. The Singapore Court dismissed both PH's application to stay RW's divorce proceedings as well as RW's application for an anti-suit injunction against PH. The High Court in Malaysia granted PH leave ('the court order') to serve his divorce petition and related cause papers on RW in Singapore via any of the following methods: personal service, pre-paid registered post, email or WhatsApp. After attempts at personal service failed, RW acknowledged receipt of the divorce petition via email and WhatsApp. In the instant application, RW sought to set aside the court order and service of the petition and to declare that the High Court in Malaysia had no jurisdiction over her in respect of PH's divorce proceedings. The grounds for the application were that: (a) the court order and service of the petition were contrary to Singapore law; (b) as RW and her children had been residing in Singapore for 16 years prior to the filing of PH's divorce petition, the Malaysian courts had no jurisdiction over her; and (c) Singapore, rather than Malaysia, was the more appropriate forum for the divorce proceedings between the parties to be heard.

Held, dismissing RW's application:

(1) The court order was not contrary to Singapore law. On the contrary, the methods of service authorised by the court order aligned with the law of Singapore which authorised such modes of substituted service to be undertaken when attempts at personal service failed. Rule 901(4) of the

Family Justice Rules of Singapore and para 79 of the Family Justice Courts Practice Directions of Singapore expressly permitted substituted service via, inter alia, email and WhatsApp when personal service could not be effected (see paras 20–21).

(2) The uncontested facts showed that PH's solicitors in Singapore had failed in their two attempts to serve the divorce petition personally on RW at her residence, which led to the court order for substituted service to be obtained. RW acknowledged receipt of the divorce petition via email and WhatsApp, demonstrating the practicality and efficiency of these modern methods of communication which were in compliance with the court order. RW's argument that the service was improper had no merit as PH had followed the appropriate legal steps to ensure proper service of the divorce petition (see paras 24–26).

(3) The court order was entirely in accordance with the law of Singapore and the service of the divorce petition followed the applicable legal procedures. Even if there had been any procedural irregularities, they did not prejudice RW as she had, in fact, received the petition and had responded to it. There was no justifiable reason to set aside the service (see para 36).

(4) It was the Malaysian court, and not the Singapore court, that had jurisdiction over the divorce proceedings. Both parties were Malaysian citizens domiciled in Malaysia and they had registered their marriage in Malaysia. In addition, PH's businesses were largely in Malaysia. For these reasons, Malaysia was the jurisdiction that had the most real and substantial connection to the parties. Malaysia, rather than Singapore, was the more appropriate forum to hear the divorce proceedings between the parties (see paras 47, 63 & 69–70).

[Bahasa Malaysia summary

Pemohon-suami ('PS') dan responden-isteri ('RI'), kedua-duanya warganegara Malaysia, telah berkahwin di Miri, Sarawak sebelum berpindah ke Australia di mana tiga orang anak mereka dilahirkan. Keluarga tersebut kemudian berpindah ke Singapura, namun tiga tahun selepas perpindahan itu, PS kembali ke Malaysia untuk menguruskan perniagaannya manakala RI dan anak-anak terus menetap di Singapura. Lima belas tahun kemudian, RI memfailkan tuntutan perceraian terhadap PS di Singapura. PS membalas dengan memfailkan tuntutan perceraian terhadap RI di Kuala Lumpur. Mahkamah Singapura menolak permohonan PS untuk menangguhkan prosiding perceraian RI serta permohonan RI untuk mendapatkan injunksi anti-saman terhadap PS. Mahkamah Tinggi di Malaysia kemudiannya memberikan kebenaran ('perintah mahkamah') kepada PS untuk menyerahkan petisyen perceraian dan dokumen berkaitan ke atas RI di Singapura melalui mana-mana kaedah berikut: serahan kediri, pos berdaftar

pra-bayar, emel atau WhatsApp. Setelah percubaan serahan kediri gagal, RI mengakui penerimaan petisyen perceraian tersebut melalui emel dan WhatsApp. Dalam permohonan ini, RI memohon untuk mengetepikan perintah mahkamah dan serahan petisyen serta memohon deklarasi bahawa Mahkamah Tinggi di Malaysia tidak mempunyai bidang kuasa ke atas dirinya mengenai prosiding perceraian PS. Alasan-alasan permohonan tersebut adalah bahawa: (a) perintah mahkamah dan serahan petisyen adalah bertentangan dengan undang-undang Singapura; (b) memandangkan RI dan anak-anak telah menetap di Singapura selama 16 tahun sebelum PS memfailkan petisyen perceraian, mahkamah Malaysia tidak mempunyai bidang kuasa ke atas dirinya; dan (c) Singapura, dan bukannya Malaysia, merupakan forum yang lebih sesuai untuk mendengar prosiding perceraian antara pihak-pihak.

Diputuskan, menolak permohonan RI:

(1) Perintah mahkamah tidak bertentangan dengan undang-undang Singapura. Sebaliknya, kaedah-kaedah serahan yang dibenarkan oleh perintah mahkamah adalah selaras dengan undang-undang Singapura yang membenarkan serahan ganti dilaksanakan apabila percubaan serahan kediri gagal. Peraturan 901(4) Family Justice Rules Singapura dan perenggan 79 Family Justice Courts Practice Directions Singapura secara nyata membenarkan serahan ganti melalui, antara lain, emel dan WhatsApp apabila serahan peribadi tidak dapat dilakukan (lihat perenggan 20–21).

(2) Fakta yang tidak dipertikaikan menunjukkan bahawa peguam PS di Singapura telah gagal dalam dua percubaan untuk menyerahkan petisyen perceraian secara kediri ke atas RI di kediamannya, yang membawa kepada perintah mahkamah untuk mendapatkan serahan ganti. RI telah mengakui penerimaan petisyen perceraian melalui emel dan WhatsApp, yang menunjukkan keberkesanan dan kepraktisan kaedah komunikasi moden ini serta pematuhannya kepada perintah mahkamah. Hujahan RI bahawa serahan tersebut adalah tidak teratur tidak mempunyai merit kerana PS telah mengikut langkah undang-undang yang sewajarnya bagi memastikan serahan petisyen perceraian dibuat dengan sah (lihat perenggan 24–26).

(3) Perintah mahkamah adalah selaras dengan undang-undang Singapura dan serahan petisyen perceraian tersebut telah dibuat mengikut prosedur undang-undang yang terpakai. Sekalipun terdapat sebarang ketidakaturan prosedur, ianya tidak memudaratkan RI kerana dia sebenarnya telah menerima petisyen tersebut dan memberikan respons terhadapnya. Oleh itu, tiada alasan yang munasabah untuk mengenepikan serahan tersebut (lihat perenggan 36).

(4) Mahkamah Malaysia, dan bukannya mahkamah Singapura, mempunyai bidang kuasa ke atas prosiding perceraian tersebut. Kedua-dua pihak

adalah warganegara Malaysia yang berdomisil di Malaysia serta telah mendaftarkan perkahwinan mereka di Malaysia. Selain itu, perniagaan PS adalah sebahagian besarnya di Malaysia. Atas sebab-sebab ini, Malaysia adalah bidang kuasa yang mempunyai kaitan paling nyata dan substantif dengan pihak-pihak. Malaysia, dan bukannya Singapura, adalah forum yang lebih sesuai untuk mendengar prosiding perceraian antara pihak-pihak (lihat perenggan 47, 63 & 69–70).]

Cases referred to

American Express Bank Ltd v Mohamed Toufic Al-Ozeir & Anor [1995] 1 MLJ 160, SC (refd)
Charnley v Charnley and Betty [1960] 1 MLJ 29 (refd)
Herbert Thomas Small v Elizabeth Mary Small (Kerajaan Malaysia & Anor, interveners) [2006] 6 MLJ 372, HC (refd)
In The Matter of an Arbitration between Coles and Ravenshear [1907] 1 KB 1, CA (refd)
Kekatong Sdn Bhd v Bank Bumiputra (M) Bhd [1998] 2 MLJ 440; [1998] 2 CLJ 266, CA (refd)
Khoo Kay Peng v Pauline Chai Siew Phin [2015] MLJU 158, HC (refd)
Neduncheliyan Balasubramaniam v Kohila a/p Shanmugam [1997] 3 MLJ 768; [1997] 4 CLJ 676, CA (refd)
Ramesh a/l Rajaratnam v SL Sharlini a/p Marnickam [2018] MLJU 1454, HC (refd)
Reebok (M) Sdn Bhd v Cimb Bank Bhd [2018] MLJU 1116; [2019] 9 CLJ 230, CA (refd)
Sino Pac Development (Thailand) Ltd v Patrick Yap Huan Ju [1998] 5 MLJ 52, HC (refd)
Spiliada Maritime Corporation v Cansulex Ltd [1987] AC 460, HL (refd)

Legislation referred to

Divorce and Matrimonial Proceedings Rules 1980 r 87
Family Justice Rules [SG] rr 48, 50, 901(4)
Law Reform (Marriage and Divorce) Act 1976 ss 3(2), 48(1)
Rules of Court 2012 O 1A, O 2 r 1, O 11 r 5(1), 5(2), 5(3), O 12 r 10(1)

YN Foo (with Kiran Dhaliwal) (YN Foo & Co) for the petitioner-husband.
Goh Siu Lin (with Denise Lim) (Kee Sern, Siu & Huey) for the respondent-wife.

Evrol Mariette Peters J:

INTRODUCTION

[1] This was an application ('this application') by the respondent-wife in encl 17 to, among others, set aside the court order which had granted the petitioner-husband leave to serve the divorce petition and the relevant cause

papers ('the divorce petition') out of jurisdiction; to set aside service of the divorce petition on the basis that the same had not been duly served on the respondent-wife; and a declaration that this court has no jurisdiction over the respondent-wife in respect of the divorce proceedings.

[2] To protect the privacy of the parties, and due to the sensitive nature of the issues involved, the petitioner-husband and respondent-wife have been anonymised in this judgment as HAT and PAT, respectively, whilst the children of the marriage have been anonymised as JAN, XAN and NAN respectively.

THE FACTUAL BACKGROUND

[3] The petitioner and respondent (collectively, 'the parties'), both Malaysian citizens, aged 55 and 41 respectively at the time of the hearing of this application, were married in 2001 in Miri, Sarawak.

[4] In 2004, the parties moved to Australia, where the children were born. In 2005, a daughter was born to the parties, and in 2007, the parties became parents to twins, a boy and a girl (collectively, 'the children'). In 2008, the family relocated to Singapore. However, in 2011, the petitioner returned to Malaysia to manage his businesses.

[5] In August 2023, the respondent filed for divorce in the Family Justice Courts of Singapore. In October 2023, the petitioner filed for judicial separation in the Kuala Lumpur High Court, but withdrew the application in December 2023, opting to file instead, the divorce petition.

[6] The petitioner then filed an application for a stay of the divorce proceedings in Singapore, whilst the respondent filed an application for an anti-suit injunction in Singapore ('the anti-suit injunction application') against the petitioner. Both applications were dismissed by the Singapore court.

[7] In January 2024, the petitioner was granted leave by this court to issue a notice of divorce petition and to serve it out of jurisdiction via personal service, prepaid registered post, email, or WhatsApp ('the court order').

[8] In February 2024, the respondent filed this application.

THE ISSUES

[9] The issues for this court to address were: (a) whether the court order directing service of the divorce petition on the respondent was contrary to the law of Singapore; (b) whether service of the divorce petition was in accordance with the law of Singapore, and if not, whether it should be set aside; (c) whether

A the Singapore court had jurisdiction to hear the divorce proceedings; and (d) whether Singapore was the proper forum to hear the divorce proceedings.

[10] This application was dismissed with costs for the following reasons.

B CONTENTIONS, EVALUATION, AND FINDINGS

Whether the court order directing service of the divorce petition on the respondent was contrary to the law of Singapore

C **[11]** The court order was granted to the petitioner pursuant to r 87 of the Divorce and Matrimonial Proceedings Rules 1980 ('the Divorce and Matrimonial Proceedings Rules') and O 11 of the Rules of Court 2012 ('the Rules of Court'), both of which read:

D Divorce and Matrimonial Proceedings Rules 1980

Rule 87 — *Service out of Malaysia*

(1) Any document in matrimonial proceedings may be served out of Malaysia —

(a) where the proceedings are pending in the High Court, in accordance with RHC *Order 11 rules 5 and 6* (service of a writ abroad); or

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Rules of Court 2012

Order 11 — Service of process out of jurisdiction

F Rule 5 — Service of notice of writ abroad

(1) Subject to the following provisions of this rule, Order 10, rule 1 and Order 62, rule 5 shall apply in relation to the service of a notice of a writ notwithstanding that the notice is to be served out of the jurisdiction.

G (2) *Nothing* in this rule or *in any order* or direction *of the Court* made pursuant to rule 5(1) shall authorize or require the doing of anything in a country in which service is to be effected *which is contrary to the law of that country.*

(3) A notice of a writ which is to be served out of the jurisdiction *need not be served personally* on the person required to be served *so long as it is served on him in accordance with the law of the country in which service is effected.*

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Rule 6 — Service of notice of writ abroad through foreign governments, judicial authorities and Malaysian consuls or by plaintiff

I (1) Where, in accordance with these Rules, notice of a writ is to be served on a defendant in any country with respect to which there subsists a Civil Procedure Convention providing for service in that country of process of the Court, the notice may be served —

(a) through the judicial authorities of that country; or

(b) subject to any provision of the Civil Procedure Convention as to the nationality of persons who may be so served-

(i) through a Malaysian consular authority in that country; or

(ii) by the plaintiff or his agent.

... (Emphasis added.)

[12] Pursuant to the court order, the petitioner was granted leave to serve the divorce petition on the respondent at her residence at Singapore, or elsewhere as the respondent may be found in Singapore, via any of the following methods:

(a) personal service;

(b) pre-paid registered post;

(c) service via email; and

(d) service via WhatsApp to her mobile number.

[13] The crux of the respondent's argument was that the court order had 'put the cart before the horse' by permitting methods of service that amounted to substituted service without first attempting personal service or service by registered post. The respondent contended that the petitioner should have first exhausted these traditional methods, and only upon failure to serve the documents, should the petitioner have sought leave of the Singapore court to authorise substituted service via electronic means such as email or WhatsApp.

[14] The respondent further asserted that electronic methods of service, including email and WhatsApp, which were sanctioned by the court order, were only permissible as substituted service with prior approval from the Singapore court. Such approval required a formal application for leave, without which the petitioner could not lawfully serve the divorce petition on the respondent, who was residing in Singapore, through these electronic channels.

[15] The respondent contended that the petitioner had improperly preempted the inclusion of email and WhatsApp as permissible modes of service within the court order. According to the respondent, this preemptive action rendered the court order contrary to the law of Singapore. Specifically, the respondent argued that the court order had violated O 11 r 5(2) of the Rules of Court, which states that 'nothing in any order of the Court shall authorise the doing of anything in a country in which service is to be effected which is *contrary to the law of that country*'.

[16] In support of such contention, the respondent had also referred to rr 48 and 50 of the Family Justice Rules of Singapore, both of which read:

A Rule 48 — *Service of writ, etc.*

(1) Unless the Court otherwise directs, the plaintiff must serve the following *personally or by registered post on the defendant*:

Rule 50 — *Substituted service*

B (1) Where *an application for leave is made to substitute* for any mode of service specified in rule 48 or 49 with another mode of service, or with notice of the proceedings by advertisement, the application must be made *ex parte* by summons supported by an affidavit setting out the grounds of the application.

(2) Where leave is given to substitute any mode of service specified in rule 48 or 49
C with notice of the proceedings by advertisement under paragraph (1), the form of the advertisement must be in accordance with Form 19. (Emphasis added.)

[17] I was unable to agree with the respondent's contention for the following reasons.
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[18] The key issue at hand was whether the court order was contrary to the law of Singapore. At this point, it became essential to understand the meaning of 'contrary to law' as articulated in O 11 r 5(1) of the Rules of Court.

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[19] The phrase 'contrary to law' refers to actions, decisions, or conduct that explicitly violate a legal provision or statute. It signifies a direct contradiction to established legal norms, where the action in question clearly breaches or opposes the letter of the law. In other words, it indicates a clear legal infraction
F or non-compliance with a statutory rule.

[20] In this case, the methods of service authorised by the court order were aligned with the law of Singapore. Specifically, r 901(4) of the Family Justice Rules of Singapore and para 79 of the Family Justice Courts Practice Directions
G of Singapore both allow the court to authorise substituted service via email, but only after attempts at personal service have been made and proved unsuccessful. These legal provisions clarify that substituted service is permissible under such circumstances, setting the legal framework within which terms of the court order. The relevant provisions state:

H Family Justice Rules

Rule 901 — *Substituted service*

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(4) For the purposes of paragraph (3), the steps which the Court may direct to be
I taken for substituted service of a document to be effected include the *use of such electronic means (including electronic mail or Internet transmission)* as the Court may specify.

Family Justice Courts Practice Directions

Paragraph 79 — *Substituted and Dispensation of Service*

– application for substituted service by way of posting on the front door at the defendant's last known address in Singapore ('the address')

– application for substituted service by way of prepaid AR registered post/ordinary post

– *application for substituted service by way of email*

– application for substituted service by way of advertisement

– application for dispensation of service (Emphasis added.)

[21] It was undeniable that both r 901 of the Family Justice Rules and para 79 of the Family Justice Courts Practice Directions expressly permit service by personal service, email, and WhatsApp within Singapore. These methods of service were clearly articulated in the court order. In my view, therefore, the court order was not contrary to the law of Singapore.

Whether service of the divorce petition was in accordance with the law of Singapore

[22] The respondent, however, argued that the service of the divorce petition should be set aside on the grounds that it did not comply with the law of Singapore, specifically under O 11 r 5(3) of the Rules of Court, which stipulate that the divorce petition which is to be served out of the jurisdiction 'need not be served personally on the person required to be served *so long as it is served on him in accordance with the law of the country* in which service is effected'.

[23] The respondent maintained that the petitioner had failed to follow the necessary two-step process, which purportedly required him to first exhaust attempts at personal service, and only then seek leave from the Singapore court to authorise substituted service via email or WhatsApp.

[24] I found this argument unconvincing for several reasons. The uncontested facts showed that the petitioner's solicitors in Singapore had made two attempts to effect personal service of the divorce petition on the respondent at her residence on 24 January 2024, and 25 January 2024. Both attempts were unsuccessful. This was corroborated by an affidavit of service of one Rafinyi bin Ahlias, an agent of the petitioner's Singapore solicitors, who affirmed that he had made two unsuccessful attempts to personally serve the respondent.

[25] Only after these unsuccessful attempts at personal service did the petitioner resort to alternative methods, specifically substituted service via email and WhatsApp, in accordance with the court order. These methods were chosen because they had been expressly permitted once personal service had

A been proved unsuccessful. The petitioner utilised the respondent's verified email address and mobile number to ensure the proper delivery of the documents.

B **[26]** On 26 January 2024, the respondent successfully received the divorce petition through both email and WhatsApp. The effectiveness of these methods of service was underscored by the fact that the respondent acknowledged receipt of the divorce petition via email and WhatsApp. This not only demonstrated the practicality and efficiency of these modern communication methods but also confirmed that the petitioner had fully complied with the methods of substituted service as set out in the court order and the law of Singapore. Consequently, the respondent's argument that the service was improper lacked merit, as the petitioner had followed the appropriate legal steps to ensure proper service of the divorce petition.

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D **[27]** It was undisputed that the petitioner had not filed a separate application for substituted service at the Singapore court. However, I agreed with the petitioner's position that obtaining such an order in Singapore was unnecessary in this case. The pivotal factor here is that the divorce proceedings were initiated in Malaysia, and therefore, the Malaysian courts had jurisdiction over the matter. By obtaining the necessary court order from the Malaysian courts, the petitioner followed the correct legal procedure. The court order explicitly permitted substituted service via email and WhatsApp, rendering any additional application for leave from the Singapore court superfluous. The legal framework governing the proceedings was Malaysian, and as such, the requirements of Singapore's procedural law, including the filing of a separate application for substituted service, did not apply.

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G **[28]** In any event, the fundamental purpose of requiring substituted service was to ensure that the respondent was made aware of the legal proceedings when traditional personal service had been unsuccessful. In this case, the petitioner made diligent and reasonable efforts to serve the respondent personally, but these attempts were unsuccessful. Given this, the court had pre-emptively authorised the use of electronic means — email and WhatsApp — as a fall-back method of service. The purpose of substituted service was not merely to follow rigid procedural steps but to ensure the respondent was informed of the proceedings, and in this case, that objective was fully met.

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I **[29]** It was crucial to highlight the undisputed fact that the respondent had in fact received the divorce petition, which was served by Singapore solicitors, ensuring that the respondent was fully aware of the ongoing proceedings. This fact was not only supported by the successful delivery of the divorce petition via email and WhatsApp but also by her subsequent actions. Upon receiving the divorce petition, the respondent promptly retained Malaysian solicitors and

actively proceeded to file this application. The respondent's active participation in the litigation process, as evidenced by her engagement with Malaysian solicitors, reinforced that the electronic modes of service, despite being non-traditional, accomplished their intended purpose. Therefore, any argument challenging the validity of the service based solely on its mode is rendered moot, as the service clearly achieved its fundamental goal of providing notice of the divorce petition.

[30] Thus, the omission of an additional application for leave from the Singapore court did not amount to a breach of legal procedure. The petitioner had complied with the overarching principles of substituted service by ensuring the respondent was duly notified through modern, reliable communication methods. As such, this did not invalidate the service of the divorce petition. The essential purpose of service — to inform the respondent of the legal action — was fully achieved, making any further procedural challenge untenable.

[31] In the final analysis, it was crucial to recognise that the fundamental purpose of service was to ensure that the individual being served was notified of the proceedings against them. This principle was underscored by Gopal Sri Ram JCA (as he was then) in the Court of Appeal case of *Kekatong Sdn Bhd v Bank Bumiputra (M) Bhd* [1998] 2 MLJ 440; [1998] 2 CLJ 266, where he articulated the importance of proper notification in legal proceedings. His Lordship's remarks highlighted that the essence of service lies in informing the concerned party of their legal obligations and the actions being taken against them, thus ensuring fairness and transparency in the judicial process.

[32] Since the respondent had sought to set aside the court order for irregularity, I was compelled to refer to O 2 r 1 of the Rules of Court, which reads:

> Order 2 — *Effect of non-compliance*
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> Rule 1 — *Non-compliance with Rules*
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> (1) Where, in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of any thing done or left undone, been non-compliance with the requirement of these Rules, *the non-compliance shall be treated as an irregularity and shall not nullify the proceedings*, any step taken in the proceedings, or any document, judgment or order therein. (Emphasis added.)

[33] It was also opportune at this point to remind parties of the principle that the 'relation of the rules of practice to the work of justice is intended to be that of handmaid rather than mistress; and the Court ought not to be so far bound and tied by rules' (as articulated by Lord Collins MR in *In The Matter of an Arbitration between Coles and Ravenshear* [1907] 1 KB 1). Consequently,

raising technicalities devoid of relevance to the merits of this application was unwarranted.

[34] Furthermore, the axiom that 'procedural skirmishes ought not to prevail, to defeat substantive justice' (in the words of Hamid Sultan Abu Backer JCA in *Reebok (M) Sdn Bhd v Cimb Bank Bhd* [2018] MLJU 1116; [2019] 9 CLJ 230) underscored the inability of this court to entertain the respondent's contention.

[35] At this juncture, reference was made also to O 1A of the Rules of Court, which reads:

> Order 1A — *Court or judge shall have regard to justice*
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> *Regard shall be to justice*
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> In administering these Rules, the Court or a Judge shall have regard to the *overriding interest of justice* and not only to the technical non-compliance with these Rules. (Emphasis added.)

[36] In my view, the court order was entirely in accordance with the law of Singapore, and the service of the divorce petition followed the applicable legal procedures. Even if there had been any procedural irregularities, they did not result in any prejudice to the respondent, as she had, in fact, received the divorce petition and was fully aware of the proceedings. Given that no prejudice was caused to her legal rights or her ability to respond, there was no justifiable reason to set aside the service of the petition. Therefore, this application to invalidate the service lacked merit.

Whether Singapore court had jurisdiction to hear the divorce proceedings

[37] The respondent had also sought a declaration that, in the circumstances of the case, this court has no jurisdiction over the respondent in respect of the divorce proceedings. Reference was made to O 12 r 10(1) of the Rules of Court, which reads:

> Order 12 — *Entry of appearance to writ*
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> Rule 10 — *Dispute as to jurisdiction*
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> (1) A defendant who *intends to dispute the jurisdiction of the Court* in the proceedings by reason of any irregularity as is mentioned in rule 9 or on any other ground shall enter an appearance and, within the time limited for serving a defence, apply to the Court for —
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> (a) an order setting aside the writ or service of the writ on him;
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> (b) an order declaring that the writ has not been duly served on him;
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> ...

(g) a declaration that in the circumstances of the case *the Court has no jurisdiction over the defendant in respect of the subject matter* of the claim or the relief or remedy sought in the action; (Emphasis added.)

[38] In support of her contention that it was not this court but the Singapore court that has jurisdiction to hear the divorce proceedings, the respondent emphasised the fact that both she and the children had been residing in Singapore for a significant period, thereby establishing a strong connection to that jurisdiction. She also highlighted the concerns regarding the welfare of the children, which she had specifically raised in her divorce petition filed in Singapore. These factors, according to the respondent, supported her argument that the Singapore court had a vested interest in addressing matters related to the children's well-being and that, therefore, Singapore was the jurisdiction to hear the divorce proceedings.

[39] In my view, these averments were insufficient to take the position that the Singapore court has jurisdiction over the divorce proceedings.

[40] In fact, the undisputed facts indicated otherwise. First and foremost, the petitioner had fulfilled the conditions prescribed by s 48(1) of the Law Reform (Marriage and Divorce) Act 1976 ('the Law Reform (Marriage and Divorce) Act') which reads:

Section 48 — *Extent of power to grant relief*

Nothing in this Act shall authorise the court to make any decree of divorce except —

(a) where the *marriage has been registered* or deemed to be registered *under this Act*; or

(b) where the marriage between the parties was contracted under a law providing that, or in contemplation of which, marriage is monogamous; and

(c) where the *domicile of the parties* to the marriage at the time when the petition is presented *is in Malaysia*. (Emphasis added.)

[41] It was also not disputed that the parties are Malaysian citizens, they were married in Malaysia, and most importantly they are both domiciled in Malaysia. On the issue of domicile, reference was made to s 3(2) of the Law Reform (Marriage and Divorce) Act, which reads:

Section 3 — Application

...

(2) For the purposes of this Act, a person who is a *citizen of Malaysia* shall be *deemed*, until the contrary is proved, to be *domiciled in Malaysia*. (Emphasis added.)

[42] The petitioner was born in Miri, Sarawak, is a Malaysian citizen, and is domiciled in Malaysia. The common law position in *Charnley v Charnley and Betty* [1960] 1 MLJ 29 that upon marriage a married woman takes on the domicile of her husband still applies in Malaysia. This was confirmed by the Court of Appeal in *Neduncheliyan Balasubramaniam v Kohila a/p Shanmugam* [1997] 3 MLJ 768; [1997] 4 CLJ 676 (CA), and most recently applied by the High Court in the cases of *Khoo Kay Peng v Pauline Chai Siew Phin* [2015] MLJU 158 and *Ramesh a/l Rajaratnam v SL Sharlini a/p Marnickam* [2018] MLJU 1454.

[43] As such, a married woman is not able to have a separate domicile from her husband upon marriage but instead takes on a domicile of dependence being that of her husband, and this domicile of dependence will continue for so long as the marriage subsists, regardless of whether the parties are living apart.

[44] As far as the respondent was concerned, therefore, by virtue of her marriage to the petitioner, she is also domiciled in Malaysia, as she had acquired a domicile of dependence based on the petitioner's domicile.

[45] My view was further reinforced by the acknowledgment from the Singapore court regarding Malaysia's jurisdiction. This recognition was evident in the divorce proceedings initiated by the respondent in Singapore, where the Singapore court affirmed that Malaysia indeed possesses jurisdiction over the matter.

[46] The dismissal of the anti-suit injunction application by the Singapore court indicated a judicial consensus that the Malaysian courts had jurisdiction over the divorce proceedings. In his judgment, it was stated by Singapore District Court Judge, Mr Kenneth Yap, in the following passage:

> 20. In the present case, there is no indication that the case is bound to fail on the merits. *The parties and their children are Malaysian citizens, and the Husband is domiciled in Malaysia. He is fully within his rights to file for divorce in Malaysia.* (Emphasis added.)

[47] Accordingly, it is this court, not the Singapore court, that has jurisdiction over the divorce proceedings, as both parties are Malaysian citizens, domiciled in Malaysia, with their marriage registered in Malaysia.

Whether Singapore was the proper forum to hear the divorce proceedings

[48] I was mindful that while this court undoubtedly has jurisdiction over the matter, the issue did not end there. The court retains the discretion to determine whether it should exercise that jurisdiction, particularly under the doctrine of *forum non conveniens*. This principle allows the court to refrain

from hearing a case if it deems that another jurisdiction would be more appropriate and convenient for the resolution of the dispute.

[49] In this light, the respondent has alternatively sought a stay of these divorce proceedings, contending that Malaysia is not the proper forum to adjudicate the dispute. She argued that the case would be more appropriately handled by the Singapore court, citing reasons including the residency of the parties and the children and the ongoing concerns regarding the welfare of the children, which the respondent have been central to her divorce petition in Singapore.

[50] The first point that must be clarified is that the doctrine of *forum non conveniens*, as explained by Lord Goff in *Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 460, does not refer to a jurisdiction that is merely convenient for the parties, but rather to the suitability *or* appropriateness of the chosen forum for resolving the dispute. The focus is on identifying the forum that has the closest connection to the issues at hand, thereby ensuring that justice can be served most effectively and fairly. This interpretation of *forum non conveniens* has been adopted in Malaysia as well, having been endorsed by the Federal Court in *American Express Bank Ltd v Mohamed Toufic Al-Ozeir & Anor* [1995] 1 MLJ 160, where the court similarly emphasised that the doctrine is about selecting the proper forum, not merely one that offers convenience to any party.

[51] In the same case, it was established that a stay of proceedings on the ground of *forum non conveniens* will only be granted if the court is convinced that 'there is some other tribunal, having competent jurisdiction, in which the case may be tried more suitably for the interests of all the parties and for the ends of justice'. This principle ensures that a stay is not granted lightly and only in situations where another forum is clearly more appropriate for resolving the dispute.

[52] In this context, the burden of proof fell squarely on the respondent to demonstrate to the court that Singapore is indeed a more appropriate forum than Malaysia. The respondent must not only establish that the Singapore court has jurisdiction but also prove that the interests of justice and the interests of the parties are better served by having the case heard there.

[53] To bolster her argument, the respondent placed significant emphasis on the fact that both she and the children have been residing in Singapore for the past 16 years. This longstanding residency, according to her, established a strong connection to Singapore and made it the more appropriate forum for addressing the divorce and related matters, particularly those concerning the welfare of the children, which she had already raised in her divorce petition

A filed in Singapore. These issues, in her view, aligned more closely with Singapore jurisdiction, where the children's interests and well-being could be more effectively addressed.

B **[54]** In making its determination, the court had to weigh two key considerations:

(a) whether it would be unjust to the petitioner to limit him to pursuing remedies in a different jurisdiction, such as Singapore; and

C (b) which forum has the most real and substantial connection to the proceedings.

[55] I was guided by the cases of *Sino Pac Development (Thailand) Ltd v Patrick Yap Huan Ju* [1998] 5 MLJ 52 and *Herbert Thomas Small v Elizabeth Mary Small (Kerajaan Malaysia & Anor, interveners)* [2006] 6 MLJ 372 where in the latter case, the High Court applied the two-stage test and held as follows:

D

> Malaysian cases have recognised that where courts of different jurisdiction have the right to hear a case, nevertheless one court may be a more appropriate or natural forum for the hearing of the case. This doctrine is known as the doctrine of *forum non conveniens* ('the said doctrine'), acknowledged and accepted in the Malaysian courts in the case of *Sino Pac Development (Thailand) Ltd v Patrick Yap Huan Ju* [1998] 5 MLJ 52 where I stated at p 61that:
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> E
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> > The doctrine of forum non conveniens has received judicial acceptance in our courts and it is accepted that a defendant to a suit may apply to a court to stay the action on the ground that this court is not the appropriate forum and there exists another more appropriate forum to hear the matter.
>
> F
>
> This is because *the more appropriate forum is the one that has the most real and substantial connection with the action.* (Emphasis added.)

G

[56] It was my view that it would be unjust to the petitioner to confine him to remedies in Singapore, for the following reasons.

H **[57]** The respondent in this case is a Malaysian national with connections and roots in Malaysia, even though she has spent significant time residing in other countries, including Australia and now Singapore. Despite these changes in residency, her nationality and legal identity remain Malaysian. Given her ties to Malaysia, it would neither be unreasonable nor unfair to treat her as a

I Malaysian wife, thus applying the rights and legal protections conferred to her under Malaysian law. This approach acknowledged her affiliation with Malaysia, both in terms of nationality and the legal framework she would naturally expect to be governed by.

[58] On the other hand, to treat her as a Singaporean wife, merely based on her current residence in Singapore, would place undue burden on the petitioner. This would involve applying the law of Singapore, which may confer different rights to the respondent than she would have under Malaysian law. Such an outcome could be seen as unfair to the petitioner, particularly if the parties had originally entered into the marriage with the understanding that their marital rights and obligations would be governed by Malaysian legal principles.

[59] Additionally, applying the law of Singapore may result in rights and obligations that neither party foresaw when the marriage began, thus placing the petitioner in a potentially disadvantageous position. The fairness of the legal framework should not shift simply because of a change in residence, particularly when the respondent's core legal identity remains tied to Malaysia. The principles of equity would therefore support treating the respondent as a Malaysian wife, ensuring that both parties' expectations are aligned with their national and legal backgrounds, rather than applying a legal system simply because of a more recent change in geography.

[60] Regarding the children, the petitioner had conceded that the actual care and control will reside with the respondent. Consequently, the primary issues to be addressed in relation to the children revolve around the determination of financial matters, specifically concerning maintenance for both children and the respondent, as well as the equitable division of matrimonial assets. This framework indicated that while the respondent will have physical custody, the focus will shift to ensuring that the financial needs of the children and the respondent are met, along with resolving how matrimonial assets will be fairly divided between the parties.

[61] The respondent's argument had also centred on the inconvenience of conducting the proceedings in Malaysia, particularly in terms of distance and travel. However, these logistical challenges could no longer be considered decisive factors, given the advancements in modern technology. The use of remote hearings and online trials, now widely recognised and embraced in legal systems worldwide, offers a practical solution to such issues. Virtual proceedings have proved to be both efficient and effective in bridging geographical gaps, allowing parties to participate fully without the need for physical presence.

[62] As such, the inconvenience of distance alone is not a compelling enough reason to justify shifting the forum from Malaysia. The ability to conduct hearings remotely ensures that both parties may access the judicial process without unnecessary hardship, thus negating the respondent's claims of inconvenience. The focus, therefore, remained on the more critical question of

which forum has the most substantial and meaningful connection to the case, rather than merely the physical location of the parties.

[63] It was also my view that Malaysia is the forum with most real and substantial connection to the parties, and where justice can be appropriately administered. Such conclusion is based on the following key facts.

[64] Both the petitioner and respondent are Malaysian citizens by birth, having been born and raised in Malaysia, with their legal domicile firmly rooted in the country. The petitioner remains a resident of Kuala Lumpur, where he has continued to live throughout, reinforcing his strong connection to Malaysia. He had neither sought nor obtained permanent residency or citizenship in any other country, further emphasising that his ties and legal obligations remain wholly centred in Malaysia. His exclusive residency and nationality underscored that Malaysia is his sole and permanent home, with no foreign affiliations that might suggest any connection to another jurisdiction.

[65] Both parties spent the formative years of their lives in Malaysia, continuing to live in Malaysia well into adulthood. Their deep-rooted connections to Malaysia are further reflected by the fact that the petitioner's surviving siblings and extended family continue to reside in the country. Similarly, the respondent's parents, one of her siblings, and other extended family members also remain in Malaysia. These strong familial ties emphasised the parties' enduring connection to their homeland, making Malaysia not only a central part of their personal histories but also a focal point of their family lives.

[66] The parties were married in Malaysia, further solidifying their ties to the country at the very foundation of their relationship. The children, who are the product of this union, also retain their Malaysian citizenship, underscoring the family's continued legal and national affiliation with Malaysia. This enduring connection to Malaysia is significant, as both the marriage and the children's citizenship reflected the family's long-standing legal, cultural, and personal ties to the country.

[67] It was also crucial to note that despite residing in Singapore**,** the respondent's efforts to obtain permanent residency there have been unsuccessful, as her multiple applications were rejected by the Immigration & Checkpoints Authority (ICA). Consequently, she remains in Singapore on a temporary basis, residing under an Employment Pass. This situation highlighted the respondent's continued and exclusive legal affiliation with Malaysia, as she had not been granted permanent residency or citizenship elsewhere, further reinforcing her primary connection to Malaysia.

[68] The respondent herself acknowledged the strength of her connections to Malaysia, as evidenced by the fact that her ties were significant enough for the petitioner to attempt to register a tax-free company in her name with the Chief Minister of Sarawak. This admission further illustrated that her legal and personal association with Malaysia is substantial, to the point where it was used as a basis for business dealings within the country. This reinforced the notion that Malaysia remains central to the respondent's legal identity and affiliations.

[69] The majority of the petitioner's business ventures are firmly established in Malaysia, making it the primary operational base for his commercial interests as well as his residence. This centrality to Malaysia is not just a matter of geography; it underscored the petitioner's deep investment in the country's economy and business landscape. Furthermore, the petitioner holds directorship positions in several listed companies that are incorporated in Malaysia, highlighting his active engagement in the Malaysian corporate sector. This strong business presence in Malaysia reinforced the notion that both the petitioner and the respondent have significant ties to the country, contributing to the argument that Malaysia is the most appropriate forum for the divorce proceedings, especially since monetary claims were made by the respondent against the petitioner in the divorce proceedings.

[70] In light of the aforementioned factors, it was evident that Malaysia is the jurisdiction with the most real and substantial connection to the parties involved. The robust ties to Malaysia highlighted in this context underscored the necessity of conducting the trial in a jurisdiction that is not only relevant but also where the parties and their circumstances are firmly rooted. It would, therefore, be inappropriate to grant a stay of the Malaysian proceedings on the grounds of *forum non conveniens*.

CONCLUSION

[71] In conclusion, after a meticulous and judicious consideration of all the evidence presented before this court, along with the arguments put forth by both parties, this application was dismissed with costs.

RW's application dismissed.

Reported by Ashok Kumar